

but not the gross pole investment, has resulted in an artificially depressed value for net pole investment. The pole attachment formula must be clarified in the manner described in the Petition in order to enable SWBT to recover just and reasonable pole attachment fees consistent with maximum rate allowed by Section 224. As explained in detail in paragraphs 3.01 to 3.08 of Appendix C to this Response, in removing future net salvage from the depreciation reserve component of the net pole cost calculation, for purposes of SWBT's 1995 rates, SWBT utilized an accepted accounting method implicit in the theoretical reserve calculations and formulas used in the Commission's depreciation prescription process.<sup>15</sup> In effect, SWBT determines what portion of the depreciation reserve is an investment reserve and what portion is a salvage reserve. Originally, when the Commission first used remaining life depreciation procedures, the Commission even prescribed separate depreciation rates for investment recovery and net salvage recovery.<sup>16</sup> While the Commission no longer prescribes separate rates, the method of separating the booked depreciation reserve into the two components continues to be recognized in the theoretical reserve formula contained in the Commission's

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<sup>15</sup> See NARUC, Public Utility Depreciation Practices 196-200 (1968); FCC, 1995 Depreciation Study Guide, Tab C (August 1994).

<sup>16</sup> Prescription of Revised Percentages of Depreciation Pursuant to Section 220(b) of the Communications Act of 1934, Order, 96 FCC 2d 257 ¶ 30 & Appendix (1983).

Depreciation Study Guide.<sup>17</sup> Therefore, SWBT's calculations of the net pole costs are consistent with proper accounting methods used in connection with the Commission's depreciation prescription process.

27 C. SWBT denies the allegation that "actual pole retirements have so lagged the anticipated recovery level, the depreciation reserve now is virtually equivalent to, or exceeds the gross pole account in two states. Kansas and Oklahoma." As explained in paragraphs 6.01-6.09 of Appendix C to this Response, while rate of retirements affect the depreciation reserve, the most significant reason that the depreciation reserve is exceeding the gross investment is the large future net salvage.

27 D. SWBT's Petition describes a clarification of the formula which corrects the problem created by the large depreciation reserve attributable primarily to future net salvage. The clarification of the formula described in SWBT's Petition is entirely consistent with the intended purpose of the Commission's formula as stated in the Report and Order in CC Docket No. 86-212 as follows:

Based on the statutory language, the Commission established the following formula to determine the cable company's share of the utility's fully allocated costs of owning a pole . . . .

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<sup>17</sup> FCC, 1995 Depreciation Study Guide, page C-1 (August 1994). For an explanation of the theoretical reserve formula, see Declaration of John Lube ¶¶ 3 07-3.08.

Our policy of identifying only a rate approaching the maximum level was established by a statutory scheme under which virtually all complaints were filed by cable companies alleging that a utility is charging in excess of its fully allocated costs.<sup>18</sup>

A rate which does not allow the utility to recover its investment in the poles is not based on fully allocated cost. The problem with the formula as applied to SWBT's circumstances would cause SWBT to be unable to recover its fully allocated costs, and thus it is not consistent with the intent of the formula expressed in the Report and Order adopting it.

28. Paragraph 27 above contains SWBT's response to some of the allegations of paragraph 28. As discussed in paragraphs 2.01-2.05 of Appendix C to this Response, SWBT has not fully recovered its investment in poles. In fact, on the average, SWBT has not even recovered one-third of its investment in poles. As of December 31, 1993, the percentage of pole investment recovered by SWBT in each of its five states is as follows:<sup>19</sup>

Arkansas	37%
Kansas	50%
Missouri	32%
Oklahoma	41%
Texas	28%

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<sup>18</sup> Report and Order ¶ 6, 53 (emphasis added). The Commission's pole attachment procedures have been based upon fully allocated costs since they were first adopted. See, e.g., Adoption of Rules for the Regulation of Cable Television Pole Attachments, Second Report and Order, CC Docket No. 78-144, 72 FCC 2d 59 ¶¶ 14-15, 19, 26, 31 (1979).

<sup>19</sup> See Appendices A-1 and A-2 to this Response.

Because SWBT has not fully recovered its pole investment, SWBT is entitled to continue calculating a pole attachment rate based upon a positive net pole cost figure. SWBT believes that the clarification of the formula should be applied consistently in all of SWBT's five states because regardless of whether net pole cost is positive or negative,<sup>20</sup> the large future net salvage has caused net pole cost to be artificially depressed which has resulted in an historical underrecovery by SWBT. In effect, the inclusion of future net salvage in the depreciation reserve has prevented SWBT from recovering a pole attachment rate based on the entirety of its remaining investment in poles, even before net pole cost has turned negative. Therefore, the clarification of the net pole cost calculation is justified in Arkansas, Missouri and Texas, the same as it is in Oklahoma and Kansas.

29. SWBT does not claim to have cured any "overrecovery," as alleged in paragraph 29. On the contrary, future net salvage has caused SWBT to recover less than it should have recovered in the past. SWBT's clarification results in a formula in which future increases in cost of removal do not cause a reduction of net pole cost, and thus, SWBT eliminates the previous distortion from the formula. The previous distortion was a reduction in the net pole cost and the pole attachment rate caused by a large cost of removal. It is not logical for increasing removal costs to reduce net pole costs and pole attachment rates. SWBT denies the allegations of paragraph 29.

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<sup>20</sup> See Declaration of John P. Lube ¶ 7.01.

30. SWBT believes that the three alleged problems described by Complainants in paragraphs 30-32 are an attempt to confuse the main issue of the Petition's clarification of the formula, which issue the Commission needs to resolve in order to rule on the Complaint. In addition, SWBT finds Complainants' arguments confusing. For example, SWBT does not know which "depreciation rate" Complainants are referring to in paragraph 30 because there are two depreciation rate numbers in the Commission's pole attachment formula: (1) the "depreciation rate for gross pole investment" and (2) the "depreciation expense."<sup>21</sup> In the "pole rate study" included in Attachment 9 to the Complaint, the former is 9.2% and the latter is 21.12%. It is unclear which number Complainants are referring to. In any event, the "depreciation rate for gross pole investment" used by SWBT is taken from the Commission-prescribed depreciation rates, which are developed for application to gross book cost.<sup>22</sup> Thus, if Complainants are referring to this number, they are wrong in stating that it is a number which has been adopted for application to a net figure. On the other hand, if Complainants reference to "depreciation rate" is meant to refer to what the Report and Order calls the "depreciation expense," then it is true that the formula converts the Commission-prescribed depreciation rate to a number that can be applied to net pole investment. In fact, the "depreciation expense" percentage is being applied to a net figure (net pole cost), contrary to

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<sup>21</sup> Report and Order Appendix B.

<sup>22</sup> See Declaration of John P. Lube ¶¶ 5.03-5.09.

Complainants' allegations. If Complainants are in fact referring to the "depreciation expense" percentage, it appears that Complainants are merely complaining that the same "depreciation expense" percentage is being applied to a larger net pole investment number, which is larger as a result of SWBT's clarification of the formula. In effect, this argument is based on the same faulty assumption contained elsewhere in the Complaint that SWBT has created a "phantom regulatory asset." SWBT's response to this allegation regarding a "phantom asset" also called an "inflated net rate base" is set forth in paragraph 27 above. Most confusing is the last sentence of paragraph 30 which alleges that "SWBT claims it has eliminated [the phantom asset] from the formula." SWBT has not made any such claim and does not understand how its clarification of the formula can be so characterized. The removal of future net salvage results in an increase of net pole cost. Thus, the effect of SWBT's clarification of the formula does not reduce the investment reflected in net pole cost. If "phantom regulatory asset," as used by Complainants, refers to the recovery of future net salvage reflected in the depreciation rates prescribed by the Commission, then SWBT would point out that SWBT is entitled to recover cost of removal as part of the future net salvage component of the Commission-prescribed depreciation rates.<sup>23</sup> Any claim by Complainants to the contrary is a challenge

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<sup>23</sup> See In the Matter of Simplification of the Depreciation Prescription Process, Report and Order, CC Docket No. 92-296, 8 FCC Rcd 8025 ¶ 99 (1993) (Depreciation Simplification Order). See generally, NARUC, Public Utility Depreciation Practices 24-26 (1968).

to the Commission's depreciation prescription procedures. SWBT's depreciation rates are based on remaining life procedures.<sup>24</sup> SWBT denies the remaining allegations of paragraph 30.

31. Because, contrary to the allegation of paragraph 31, SWBT does not concede that any "rate base has been inflated by a phantom asset," SWBT does not agree that the rate of return is overrecovering investment. If "phantom asset" as used by Complainants refers to future net salvage, SWBT maintains that future net salvage has caused net pole cost to be too low in the past, and thus, the removal of future net salvage does not "inflate the rate base;" rather, it corrects the "rate base." Paragraph 27 above contains SWBT's explanation as to why SWBT is entitled to continue charging pole attachment fees so long as it continues to have unrecovered investment. The fact that SWBT's clarification results in a corrective increase to net pole cost does not justify any adjustment to the rate of return. As explained in paragraph 27 above, SWBT is merely correcting an imbalance in the formula that exists because future net salvage is factored into the depreciation reserve, but not into the gross pole investment. The net pole cost should be computed on the basis of an "apples-to-apples" comparison of the gross pole investment and the portion of the depreciation reserve which represents the recovery of such investment. SWBT denies the allegations of paragraph 31.

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<sup>24</sup> However, contrary to Complainants' claim, the depreciation rate derived from the remaining life and prescribed by the Commission is not applied to net book cost. See Declaration of John P. Lube ¶¶ 5.12-5.13.

32. Similarly, SWBT does not agree that the figures for accumulated deferred taxes are incorrect because SWBT has not admitted, nor has the Commission determined, that SWBT's "book depreciation . . . is incorrect." The reason for including accumulated deferred taxes in the net pole cost calculation is explained in the Report and Order as follows:

The amount of income taxes deferred through the use of accelerated depreciation . . . represents funds for capital investment. Most regulatory commissions, concluding that the accumulated deferred tax reserve represents cost-free capital, adjust . . . to prevent the utility from earning a return on the portion of its investment financed by the reserve. The majority of commissions which follow the normalization practice deduct the depreciation related [to] deferred income taxes from the utility's rate base.<sup>25</sup>

Similarly, the Commission's net pole cost formula deducts accumulated deferred taxes associated with poles from the gross pole investment. This deduction uses the accumulated deferred taxes that SWBT records in its books. The fact that SWBT's Petition clarifies the depreciation reserve by eliminating the portion thereof which is associated with salvage does not mean that SWBT's booked accumulated deferred tax is in error. Rather, the use of booked depreciation reserve in the pole attachment formula has caused a problem because there is no salvage component in the gross pole investment. Instead of taking future net salvage out of the depreciation reserve, SWBT could have adopted an alternative solution which added future net salvage to gross pole investment.<sup>26</sup>

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<sup>25</sup> Report and Order ¶ 46.

<sup>26</sup> See Reply Comments at n.9.



Had SWBT adopted this alternative solution, there would not even be any arguable basis for making an adjustment to accumulated deferred tax. Because SWBT chose the most conservative solution, i.e., the one that resulted in the smallest increase in the pole attachment rate, does not mean that deferred tax associated with salvage should also be removed. The legitimacy of the formula's adjustment to gross pole investment for accumulated deferred taxes is not affected by the adjustment to the depreciation reserve. In the terminology of the Report and Order, if the utility has excess cost-free capital, it is deducted from the rate base, and if it has a deficiency (as is the case with poles for SWBT), then it is added to the rate base. The deficiency or excess is one associated with taxes and it exists no matter which of the two methods is used, i.e., whether future net salvage is taken out of the depreciation reserve or is added to the gross pole investment. The inclusion of accumulated deferred taxes in the formula recognizes the timing difference between tax expense recognition and tax payment, which is not affected by a change in the depreciation reserve for purposes of the pole attachment formula. Accumulated deferred taxes are associated with both original investment and future net salvage. In SWBT's case, accumulated deferred taxes associated with poles is negative, and thus, it is added to the rate base. In effect, this negative figure represents a shortage of "working capital" associated with deferred taxes for poles. It would be inconsistent with the intent of the Report and Order to alter the accumulated deferred tax figure because it is supposed to be

factored into the net pole cost calculation regardless of whether it is positive or negative.<sup>27</sup> If accumulated deferred taxes associated with future net salvage were removed from the formula, this would frustrate the whole purpose for including this component in the formula and would unfairly relieve cable operators of the burden of compensating SWBT for its use of tax dollars prior to expense recognition. In any event in SWBT's clarification of the formula, SWBT minimized the affected components by only adjusting the depreciation reserves and by choosing the most conservative alternative while remaining consistent with the intent of the Report and Order.<sup>28</sup> In further response to paragraph 32 of the Complaint, SWBT admits that, generally speaking, accumulated deferred tax is based on the difference between book and tax depreciation. SWBT denies the remaining allegations of paragraph 32.

33. Although the Complainants' position is unclear and confusing, they appear, in effect, to take the position that the formula should result in a negative net pole cost even though SWBT has not recovered much of its pole investment. In addition, the Complainants somehow reach the incorrect conclusion that SWBT has

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<sup>27</sup> As explained above, accumulated deferred tax is a deduction from gross pole investment when there is excess cost-free capital associated with poles or an addition to gross pole investment when there is a shortage.

<sup>28</sup> To be consistent in its handling of depreciation reserves, SWBT has removed future net salvage from both the depreciation reserve for poles and the total plant depreciation reserve. The adjusted figures for plant depreciation reserve are shown in Appendix A-8.

charged too much in the past. For example, they refer to the "past or present overcharges." The past overcharges are referred to as "high depreciation costs and return to cable operators through pole rent." It is unclear whether "high depreciation costs" refers to the Commission-prescribed depreciation rates or the depreciation expense included in the pole attachment formula. In either case, it is SWBT's position that there have not been any past or present overcharges, nor are SWBT's depreciation costs too high.

Also, in either case, the source of the method of determining the depreciation expense are the depreciation methods and rates prescribed by the Commission. The Commission reviews SWBT's depreciation rates and prescribes the basic factors used to compute them. In contending that SWBT's correction to the formula follows after an overrecovery through "high depreciation costs," the Complainants are questioning the Commission's depreciation prescription process.<sup>29</sup> If they genuinely believed this was the case, the Complainants should have addressed this issue with the Commission in connection with the recent review of the depreciation prescription process. SWBT believes the Commission's depreciation prescription process has been very thorough. Similarly faulty are the Complainants' statements concerning the rate of retirement of poles. Contrary to Complainants' allegations, the problem of a negative net pole cost would not "right itself."<sup>30</sup> If SWBT's retirements of an asset are too slow, then the Commission will

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<sup>29</sup> See Depreciation Simplification Order passim.

<sup>30</sup> See Declaration of John P. Lube ¶¶ 6.01-6.09.

prescribe a longer life. The Commission's depreciation prescription process was designed to assure that depreciation rates do not overcharge ratepayers, and the pole attachment formula uses the same depreciation rate to calculate the depreciation expense that LECs are allowed to charge cable operators. Contrary to Complainants' allegations concerning "past or present overcharges," SWBT does not agree that including future net salvage in the formula could have resulted in an excessive rate in previous years because the high cost of removal has increased the depreciation reserve, which has previously reduced the net pole cost. In any event, it would not be appropriate to determine whether current rates are just and reasonable based upon rates charged previously because the Commission's pole attachment complaint procedures only provide a prospective remedy "from the date that the complaint as acceptable, was filed." 47 C.F.R. § 1.1410. In other words, even assuming, arguendo, that there were past overcharges, if the Commission considered the past overcharges in setting present or future rates, this would amount to giving the cable operator a remedy for alleged past overcharges. However, as Mr. Lube states, net salvage for poles has been negative ever since the Commission first prescribed depreciation rates in 1951 in light of the high cost of removal.<sup>31</sup> Therefore, it has not been possible for SWBT to overcharge cable operators for pole attachments by virtue of including future net salvage in the depreciation reserve. If the past rates were considered in determining the current pole

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<sup>31</sup> See Declaration of John P. Lube ¶ 2.03.

attachment rate, the current rate would need to be increased above what SWBT is charging in 1995 to offset SWBT's historical underrecovery. In further response to paragraph 33, SWBT incorporates paragraphs 27-32 of its Response. Other allegations of paragraph 33 are based on the same faulty assumptions addressed above, and therefore, SWBT denies them.

34. SWBT agrees that the pole attachment formula needs to be clarified to produce a just and reasonable rate, but SWBT disagrees with Complainants' contention that the clarification or modification of the formula should be limited to the states in which SWBT's net pole cost has turned negative. Paragraph 28 above contains SWBT's response to most of the allegations of paragraph 34, especially those relating to whether the clarification should apply to all states or only those states in which SWBT's pole cost has turned negative. SWBT denies Complainants' allegation that the lawful rates under the Commission's formula are \$1.50, \$1.60 and \$2.10 for Arkansas, Missouri and Texas, respectively. SWBT states that the only just and reasonable rates for SWBT pole attachments are those set forth in Appendix A to this Response and SWBT denies that any other rates set forth in the Complaint or its Attachments are proper. SWBT has reviewed Complainants' calculations set forth in Attachments 11-15. First SWBT does not agree that Complainants have properly calculated the pole attachment rates in any of the Attachments to the Complaint, primarily because the proper method of calculating such rates is set forth in Appendix A to this

Response.<sup>32</sup> Second, SWBT does not agree with Complainants' calculations because as shown in Appendix B to this Response, SWBT has summarized some of the errors and inconsistencies that SWBT discovered in its review of Complainants' calculations contained in the Attachments to the Complaint. SWBT denies the remaining allegations of paragraph 34.

35. The two "solutions" described in paragraphs 35-36 are improper and unlawful. Because SWBT has not yet recovered all of its investment in poles, it is not necessary or appropriate for the Commission to use an alternate method of calculating pole attachment rates. Because SWBT has not recovered all of its pole investment in each of its five states, SWBT is entitled to charge a reasonable pole attachment rate computed in a manner consistent with Section 224. Absent a rulemaking proceeding to consider alternative methods, SWBT submits that its Petition proposes the best solution possible using the existing formula as clarified in the manner described in the Petition. Both of Complainants' proposed methods are ludicrous: the first method would require SWBT to pay Complainants to occupy SWBT's poles; and the second method would result in an extremely low rate, such as 13¢ - 15¢ per pole per year, compared to rates which are typically in the range

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<sup>32</sup> However, SWBT does not disagree with the calculations shown in Attachments 11c, 12c, 13c, 14c and 15c to the Complaint because those are SWBT's summaries of the calculations of the 1995 rates, which are supported by the calculations in Appendix A to this Response.

of \$3.00 to \$6.00 per pole per year.<sup>33</sup> SWBT maintains that the Complainants' proposed methods are improper and unlawful. The only issue properly presented by Complainants' Complaint is whether SWBT's rates are too high. The Commission should not consider alternate methodologies representing such radical departures from the Commission's existing methodology, except -- to the extent any such alternatives are considered at all -- in the context of a rulemaking to reconsider the Commission's existing formula. It would be contrary to the framework adopted in the Report and Order in CC Docket No. 86-212 to consider using such radically different methods without first conducting a rulemaking proceeding. SWBT specifically rejects Complainants' calculations of billing credits as preposterous. SWBT denies the allegations of paragraph 35.

36. SWBT reiterates that its pole investment is not fully depreciated, as explained in more detail in paragraph 28 above. SWBT specifically rejects the results of Complainants' "operating margin" or "operating ratio" methodology.<sup>34</sup> Paragraph 35 above contains SWBT's response to most of the allegations of paragraph 36, which SWBT denies.

37. SWBT denies the allegations of paragraph 37.

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<sup>33</sup> See, e.g., Texas Utilities, 997 F.2d at 927 (noting that rates for attachments are "currently in the neighborhood of \$5 per pole per year").

<sup>34</sup> SWBT states that the cases cited in footnote 20 of the Complaint speak for themselves and that they are irrelevant in the determination of the maximum pole attachment rate under Section 224.

38. SWBT denies the allegations of paragraphs 38-39 and specifically denies that the present rate change constitutes abuse of SWBT's pole facilities in question. SWBT denies that the present rate change has had any anticompetitive effect on any of the Complainants or their individual members, denies that the present rate change could have any anticompetitive effect, and denies that the present rate change was intended to have any such anticompetitive effect. SWBT denies that there is any connection between the issue presented by the present Complaint and the issues involved in Heritage Cablevision Assocs. of Dallas, L.P. v. Texas Utils. Elec. Co., 6 FCC Rcd 7099 (1991), recon. dismissed, 7 FCC Rcd 4192 (1992), aff'd, Texas Utils. Elec. Co. v. FCC, 997 F.2d 925 (D.C.Cir. 1993), a proceeding to which SWBT was not a party. SWBT further notes that the Commission's decision in that case was not upheld because its interpretation of Section 224 was the only possible construction of the statute but because it was "a permissible construction, rational and consistent with the congressional purpose in enacting the PAA." Texas Utils., 997 F.2d at 927 (emphasis added). SWBT therefore denies that its past policy of charging cable operators higher rates for non-video pole attachments pending the outcome of the Heritage Cablevision/Texas Utilities matter has any bearing on the present dispute and further denies that its conduct in following that policy was anticompetitive or an abuse of its pole facilities. In any event, any such allegations are not relevant to a determination of the just and reasonable rate under Section 224. SWBT maintains that



sound accounting principles alone - as reflected in Appendix C to this Response -- are the proper basis for determining whether or not SWBT's rates are excessive and the Commission should disregard Complainants' inflammatory accusations. The illogical foundation of Complainants' position appears to be that the Commission should punish SWBT for alleged past behavior by setting a lower rate for pole attachments. Not only would such punitive rate-setting be illogical, it would also be contrary to Section 224.

39. SWBT denies the allegations contained in the first sentence of paragraph 39 and further states that the allegation is conclusory, ungrounded in fact and implausible.<sup>35</sup> SWBT is without information sufficient to form a belief as to the truth of the second sentence of paragraph 39, denies the allegations contained in the third sentence of paragraph 39, states its belief that the present pole attachment rate change has not had and could not have any anticompetitive effect on any of the Complainants or their members, and further states that, on August 26, 1994, more than three months before the filing of Complainants' Complaint, it filed its own Petition with the Commission in order to secure an earlier resolution of the issues now raised by Complainants' Complaint.

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<sup>35</sup> SWBT does not see how the 1995 rate increase could "cripple," "destroy," "handicap," or even materially affect any cable operator. For example, a typical cable franchise in Missouri that has 1,500 pole attachments would experience an increase of only \$2,445.00 per year (\$1.63 per pole per year increase times 1,500). Complainants have exaggerated the consequences of this increase in pole attachment rates. In any event, the issue is not the materiality of the increase to cable operators or SWBT; rather, it is whether SWBT or its ratepayers should continue to subsidize this portion of the fully allocated cost of Complainants' pole attachments.

SWBT hopes that the Commission will rule on its Petition early this year, which ruling should resolve this Complaint much sooner than the complaint proceedings cited in footnote 26 of the Complaint. SWBT has no desire for its pole attachment rates to be subject to the challenge of the Complaint for an extended period of time and encourages the Commission to rule promptly. SWBT denies the allegations contained in the fourth sentence of paragraph 39 and states its belief that Complainants are by this proceeding, seeking pole attachment rates at artificially low prices at the expense of SWBT and its ratepayers. SWBT states that the Commission rulings cited in footnote 26 speak for themselves. SWBT denies the remaining allegations of paragraph 39.

40. SWBT denies that Complainants are entitled to any relief whatsoever.<sup>36</sup>

#### **AFFIRMATIVE DEFENSES**

As and for its Affirmative Defenses to the Complaint, SWBT states as follows:

1. Because Complainants have failed to provide sufficient evidence that SWBT's pole attachment rates exceed the maximum rate allowed by the Pole Attachment Act, 47 U.S.C. § 224, Complainants have failed to state a prima facie case under the Commission's pole attachment complaint rules, 47 C.F.R. §§ 1.1401

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<sup>36</sup> As indicated in paragraphs 22-23 of this Response, SWBT intends to resolve that portion of the Complaint relating to timing of notices in Kansas and western Missouri in a manner which SWBT believes should be satisfactory to Complainants, and thus it is unnecessary for the Commission to grant any relief with respect to the timing of notices.

et seq. In particular, Complainants have failed to take into consideration, in a manner consistent with Section 224, the fact that, on the average, SWBT has not even recovered one-third of its investment in poles. See paragraph 28 of the Response.

2. Costs and attorneys' fees cannot be awarded by the Commission in connection with a pole attachment complaint. See Adoption of Rules for the Regulation of Cable Television Pole Attachments, First Report and Order, CC Docket No. 78-144, 68 FCC 2d 1585 ¶ 48 (1978); Newport News Cablevision, Ltd. v. Virginia Electric & Power Co., Order, PA-87-0006, 7 FCC Rcd 2610 ¶ 19 (1992).

3. For the foregoing reasons, SWBT respectfully requests that the Commission dismiss the Complaint with prejudice, deny the award of costs and attorneys' fees and grant SWBT such other relief as the Commission deems just and reasonable.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

By Jonathan W. Royston  
Robert M. Lynch  
Durward D. Dupre  
Jonathan W. Royston

Attorneys for  
Southwestern Bell Telephone Company

One Bell Center, Suite 3520  
St. Louis, Missouri 63101  
(314) 235-2507

January 17, 1995

**CERTIFICATE OF SERVICE**

I, Martha Marshalek, hereby certify that the foregoing Response to Pole Attachment Complaint of Southwestern Bell Telephone Company, have been served this 17th day of January, 1995 to the Parties of Record.

Martha Marshalek

**Martha Marshalek**

**January 17, 1995**

KAREN BRINKMAN  
SPECIAL ASSISTANT  
FEDERAL COMMUNICATIONS COMMISSION  
1919 M STREET NW ROOM 814  
WASHINGTON DC 20554

CHAIRMAN REED E. HUNDT  
FEDERAL COMMUNICATIONS COMMISSION  
ROOM 814  
1919 M STREET NW  
WASHINGTON DC 20554

COMMISSIONER JAMES H QUELLO  
FEDERAL COMMUNICATIONS COMMISSION  
ROOM 802  
1919 M STREET NW  
WASHINGTON DC 20554

COMMISSIONER SUSAN NESS  
FEDERAL COMMUNICATIONS COMMISSION  
1919 M STREET NW ROOM 832  
WASHINGTON DC 20554

COMMISSIONER RACHELLE CHONG  
FEDERAL COMMUNICATIONS COMMISSION  
1919 M STREET NW ROOM 844  
WASHINGTON DC 20554

COMMISSIONER ANDREW C BARRETT  
FEDERAL COMMUNICATIONS COMMISSION  
ROOM 826  
1919 M STREET NW  
WASHINGTON DC 20554

WILLIAM KENNARD  
GENERAL COUNSEL  
FEDERAL COMMUNICATIONS COMMISSION  
ROOM 614  
1919 M STREET NW  
WASHINGTON DC 20554

SUSAN GERMAN  
FEDERAL COMMUNICATIONS COMMISSION  
2033 M STREET NW ROOM 812  
WASHINGTON DC 20554

THADDEUS MACHCINSKI  
FEDERAL COMMUNICATIONS COMMISSION  
2000 L STREET NW ROOM 812  
WASHINGTON DC 20554

KENNETH ACKERMAN  
FEDERAL COMMUNICATIONS COMMISSION  
2000 L STREET NW ROOM 812  
WASHINGTON DC 20554

KATHLEEN WALLMAN  
FEDERAL COMMUNICATIONS COMMISSION  
2033 M STREET NW ROOM 920  
WASHINGTON DC 20554

JONATHAN REEL  
FEDERAL COMMUNICATIONS COMMISSION  
2000 L STREET NW SUITE 257  
WASHINGTON DC 20554

ARKANSAS PUBLIC SERVICE COMMISSION  
POST OFFICE BOX C-400  
LITTLE ROCK ARKANSAS 72203

MISSOURI PUBLIC SERVICE COMMISSION  
POST OFFICE BOX 360  
JEFFERSON CITY MO 65102

OKLAHOMA CORP COMMISSION  
PUBLIC UTILITIES DIVISION  
500 JIM THORPE OFFICE BLDG  
2101 N LINCOLN STREET  
OKLAHOMA CITY OK 73105

KANSAS CORPORATION COMMISSION  
ATTN: UTILITIES DIVISION  
1500 SW ARROWHEAD RD  
TOPEKA KS 66604

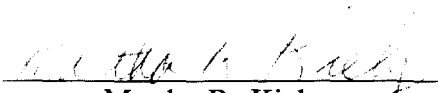
TEXAS PUBLIC UTILITY COMMISSION  
7800 SHOAL CREEK BLVD  
AUSTIN TX 78757

PAUL GLIST  
JOHN DAVIDSON THOMAS  
COLE RAYWID & BRAVERMAN LLP  
1919 PENNSYLVANIA AVE NW  
SUITE 200  
WASHINGTON DC 20006

INTERNATIONAL TRANSCRIPTION SERVICES  
1919 M STREET  
ROOM 246  
WASHINGTON DC 20554

CERTIFICATE OF SERVICE

I, Martha R. Kiely, hereby certify that copies of Southwestern Bell Corporation's Reply Comments have been served by first class United States mail, postage prepaid, on the parties listed on the attached.

  
Martha R. Kiely

January 17, 1995

William P. Barr,  
Attorney General  
U.S. Department of Justice  
10th & Constitution Ave., N.W.  
Room 4111  
Washington, DC 20530

David L. Nace  
Lukas, McGowan, Nace  
and Gutierrez  
1819 H Street, N.W.  
7th Floor  
Washington, DC 20006

Catherine G. O'Sullivan  
U.S. Department of Justice  
10th & Pennsylvania Ave., N.W.  
Room 3224  
Washington, DC 20530

Carolyn C. Hill  
ALLTEL Service Corporation  
1710 Rhode Island Ave., N.W.  
Suite 1000  
Washington, DC 20036

Robert L. Pettit  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, DC 20554

Elizabeth A. Kusibab  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007

John E. Ingle  
Federal Communications Commission  
1919 M Street, N.W.  
Room 614  
Washington, DC 20554

Francine J. Berry  
Mark C. Rosenblum  
American Telephone and  
Telegraph Company  
295 North Maple Avenue  
Basking Ridge, NJ 07920

Aaron I. Fleischman  
Aurthur H. Harding  
Fleischman and Walsh  
1400 16th Street, N.W.  
Suite 600  
Washington, DC 20036

Floyd S. Keene  
Michael S. Pabian  
Ameritech Operating Companies  
2000 W. Ameritech Center Drive  
Hoffman Estates, IL 60196



John R. Feore, Jr.  
Werner K. Hartenberger  
Dow, Lohnes and Albertson  
1255 23rd Street, N.W.  
Suite 500  
Washington, DC 20037

M. Robert Sutherland  
BellSouth Corporation  
4300 Southern Bell Center  
675 West Peachtree St., N.W.  
Atlanta, GA 30375

Arnold & Porter  
NATOA, the City of Lee's Summit,  
and the City of New York  
1200 New Hampshire Ave., N.W.  
Washington, DC 20036

James R. Young  
Bell Atlantic Telephone  
Companies  
1710 H Street, N.W.  
Washington, DC 20006

Samuel Loudenslager  
Arkansas PSC  
1000 Center Street  
Little Rock, AK 72203

Thomas P. Cohan  
Office of Cable Communications  
Boston City Hall  
Boston, MA 02201

Joseph W. Waz, Jr.  
Wexler, Reynolds, Harrison  
and Schule, Inc.  
1317 F Street, N.W.  
Suite 600  
Washington, DC 20006

Ian D. Volner  
Ronald A. Siegel  
Cohn and Marks  
1333 New Hampshire Ave., N.W.  
Suite 600  
Washington, DC 20036

Janice E. Kerr  
J. Calvin Simpson  
California PSC  
505 Van Ness Avenue  
San Francisco, CA 94102

Frank DiGiammarino  
CT&CAC of Lexington  
1625 Massachusetts Avenue  
Lexington, MA 02173